

Department of Health and Human Services

§ 90.43

(c) Beginning with the effective date of an agency's final regulations, the agency may not impose a new age distinction unless the age distinction is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

(d) Beginning 12 months after the publication of its age discrimination regulations, an agency may not continue an existing age distinction, unless the age distinction has already been adopted by regulation or is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

§ 90.33 Interagency cooperation.

Where two or more agencies provide Federal financial assistance to a recipient or class of recipients, the Secretary may designate one of the agencies as the sole agency for all compliance and enforcement purposes with respect to those recipients, except for the ordering of termination of funds and the notification of the appropriate committees of Congress.

§ 90.34 Agency reports.

Each agency shall submit to the Secretary not later than December 31 of each year, beginning in 1979, a report which:

(a) Describes in detail the steps taken during the preceding fiscal year to carry out the Act; and

(b) Contains data on the frequency, type, and resolution of complaints and on any compliance reviews, sufficient to permit analysis of the agency's progress in reducing age discrimination in programs or activities receiving Federal financial assistance from the agency; and

(c) Contains data directly relevant to the extent of any pattern or practice of age discrimination which the agency has identified in any programs or activities receiving Federal financial assistance from the agency and to progress toward eliminating it; and

(d) Contains evaluative or interpretative information which the agency determines is useful in analyzing agency progress in reducing age discrimination in programs or activities receiving

Federal financial assistance from the agency; and

(e) Contains whatever other data the Secretary may require.

[44 FR 33776, June 12, 1979, as amended at 70 FR 24321, May 9, 2005]

Subpart D—Investigation, Conciliation and Enforcement Procedures

§ 90.41 What is the purpose of this subpart?

This subpart sets forth requirements for the establishment of compliance, investigation, conciliation, and enforcement procedures by agencies which extend Federal financial assistance.

§ 90.42 What responsibilities do recipients and agencies have generally to ensure compliance with the Act?

(a) A recipient has primary responsibility to ensure that its programs or activities are in compliance with the Age Discrimination Act and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to an agency to the extent required to determine whether it is in compliance with the Act.

(b) An agency has responsibility to attempt to secure recipient compliance with the Act by voluntary means. This may include the use of the services of appropriate Federal, State, local, or private organizations. An agency also has the responsibility to enforce the Age Discrimination Act when a recipient fails to eliminate violations of the Act.

[44 FR 33776, June 12, 1979, as amended at 70 FR 24322, May 9, 2005]

§ 90.43 What specific responsibilities do agencies and recipients have to ensure compliance with the Act?

(a) *Written notice, technical assistance, and educational materials.* Each agency shall: (1) Provide written notice to each recipient of its obligations under the Act. The notice shall include a requirement that where the recipient initially receiving funds makes the funds